

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

**JILL DILLARD, JESSA SEEWALD,
JINGER VUOLO, and JOY DUGGAR**

PLAINTIFFS

vs.

CASE NO. 5:17-5089-TLB

**CITY OF SPRINGDALE, ARKANSAS;
WASHINGTON COUNTY, ARKANSAS;
KATHY O'KELLEY, in her individual and
official capacities;
ERNEST CASE, in his individual and official capacities;
RICK HOYT, in his individual and official capacities;
STEVE ZEGA, in his official capacity;
BAUER PUBLISHING COMPANY, L.P.;
BAUER MAGAZINE, L.P.;
BAUER MEDIA GROUP, INC.;
BAUER, INC.;
HEINRICH BAUER NORTH AMERICA, INC.;
BAUER MEDIA GROUP USA, LLC; and
DOES 1-10, inclusive**

DEFENDANTS

**MOTION TO DISMISS
OF SEPARATE DEFENDANTS CITY OF SPRINGDALE, ERNEST CATE, IN HIS
INDIVIDUAL AND OFFICIAL CAPACITIES, AND KATHY O'KELLEY IN HER
INDIVIDUAL AND OFFICIAL CAPACITIES,**

COMES NOW the Separate Defendants, City of Springdale, Ernest Cate ("Cate"), in his individual and official capacities, and Kathy O'Kelley ("O'Kelley"), in her individual and official capacities (collectively referred to herein as the "Springdale Defendants"), by and through the undersigned attorneys, and for their Motion to Dismiss, state as follows:

1. That Plaintiffs filed an action in this Court on May 18, 2017, against, among others, the Springdale Defendants alleging the following six causes of action against the Springdale Defendants: 1) tort of invasion of privacy – public disclosure of private fact in violation of Arkansas law; 2) tort of invasion of privacy – intrusion upon seclusion in violation of Arkansas law; 3) tort of

outrage in violation of Arkansas law; 4) violation of Arkansas Constitution – due process; 5) violation of 42 U.S.C. § 1983 – Fourteenth Amendment Due Process; and 6) violation of 42 U.S.C. § 1983 – *Monell*. These six causes of action alleged against the Springdale Defendants can generally be categorized as three tort claims and three constitutional claims.

2. That the Springdale Defendants move to dismiss all of the Plaintiffs' claims, as against them, in their entirety as a matter of law and pursuant to Fed. R. Civ. P. 12(b)(6).

3. Plaintiffs' claims against Defendants Cate and O'Kelley individually should be dismissed with prejudice as a matter of law because Cate and O'Kelley individually, are entitled to qualified immunity.

4. Springdale Defendants are entitled to both statutory and qualified immunity from Plaintiffs' tort claims based on Ark. Code Ann. § 21-9-301(a) and Arkansas Supreme Court precedent.

5. Plaintiffs' claims against the City of Springdale under § 1983-*Monell* should be dismissed for failure to state a Constitutional violation.

6. Plaintiffs' tort claims should be dismissed because they have failed to allege intentional conduct requisite for intentional torts under Arkansas Law.

7. Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Plaintiffs have failed to state a claim upon which relief can be granted, therefore their Complaint should be dismissed.

8. Springdale Defendants reserve the right to raise all affirmative defenses available to them including but not limited to those found in Federal Rules of Civil Procedure 12(b) and 8(c).

WHEREFORE, Springdale Defendants pray that this Court dismiss Plaintiffs' Complaint

against the Springdale Defendants in its entirety, with prejudice, as a matter of law and pursuant to Fed. R. Civ. P. 12(b)(6), for its attorney's fees and costs, and any and all other relief this Court deems proper.

Respectfully Submitted,

/s/ R. Justin Eichmann

R. Justin Eichmann (Ark. Bar No. 2003145)

E-mail: jeichmann@arkansaslaw.com

Thomas N. Kieklak (Ark. Bar No. 92262)

Email: tkieklak@arkansaslaw.com

HARRINGTON, MILLER, KIEKLAK,
EICHMANN & BROWN, P.A.

4710 S. Thompson, Suite 102

Springdale, AR 72764

Phone: (479) 751-6464

Fax: (479) 751-3715

and

Susan Keller Kendall (Ark. Bar No. 98119)

KENDALL LAW FIRM, PLLC

3706 Pinnacle Hills Parkway, Suite 201

Rogers, Arkansas 72758

Email: skk@kendalllawfirm.com

Phone: (479) 464-9828

Fax: (479) 464-9768

**COUNSEL FOR SPRINGDALE
DEFENDANTS**

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on the 29th day of June, 2017, a true and correct copy of the above and foregoing Motion to Dismiss of Separate Defendants City of Springdale, Ernest Cate, in his individual and official capacities, and Kathy O'Kelley in her individual and official capacities was filed with the Clerk via the CM/ECF system which will send notification of filing to the following:

Lauren S. Wulfe
Robert C. O'Brien
Steven E. Bledsoe
LARSON O'BRIEN, LLP
555 S. Flower Street
Suite 4400
Los Angeles, CA 90071
(213) 436-4888
lwulfe@larsonobrienlaw.com
robrien@larsonobrienlaw.com
sbledsoe@larsonobrienlaw.com

Shawn B. Daniels
Sara C. Jewell
HARE, WYNN, NEWELL & NEWTON, LLP
129 W. Sunbridge Drive
Fayetteville, AR 72703
479-521-7000
Fax: 479-437-2007
shawm@hwnn.com
sjewell@hwnn.com

Cynthia W. Kolb
CROSS, GUNTER, WITHERSPOON & GALCHUS, P.C.
500 President Clinton Avenue
Suite 200
Little Rock, AR 72201
(501) 371-9999
Fax: (501) 371-0035
ckolb@cwgw.com

/s/ R. Justin Eichmann

R. Justin Eichmann

Arkansas Bar No. 2003145

HARRINGTON, MILLER, KIEKLAK,

EICHMANN AND BROWN, P.A.

Attorney for Springdale Defendants

4710 S. Thompson, Suite 102

Springdale, AR 72764

(479)751-6464